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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE TESLA, INC. SECURITIES
LITIGATION

Case No. 3:18-cv-04865-EMC-KAW

**DECLARATION OF SHARON BINGER
IN RESPONSE TO PLAINTIFF'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL**

1 I, Sharon Binger, declare as follows:

2 1. I am currently an employee of Silver Lake Technology Management, L.L.C.
3 (“Silver Lake”), a non-party in this litigation. I have been employed by Silver Lake since 2017.
4 My current title is Managing Director, Chief Compliance Officer & Head of Litigation. My
5 responsibilities include administering Silver Lake’s compliance program worldwide and
6 addressing the firm’s litigation. I have personal knowledge of the matters set forth herein and I
7 could and would testify competently hereto, if called upon to do so.

8 2. Silver Lake is a global technology investment firm. It raises capital from investors
9 and invests those funds into the world’s leading technology businesses. Leveraging a deep
10 network of relationships throughout the global technology industry, Silver Lake seeks to cultivate
11 proprietary or specialized investment opportunities not typically available to generalist investors.

12 3. The identity of Silver Lake’s investors is highly-sensitive and confidential. Silver
13 Lake does not publicly or privately identify them to others in light of the competitive nature of the
14 private equity industry. There also is a long-established relationship of confidentiality and Silver
15 Lake is contractually prohibited from revealing who has invested in its funds.

16 4. Silver Lake’s process for selecting potential investment opportunities also is
17 highly-sensitive and confidential because Silver Lake uses a proprietary and bespoke
18 methodology. Silver Lake’s investment selection and strategy embodies its substantial experience
19 in the private equity industry and is at the core of the value Silver Lake offers to its investors.
20 There is no one-size-fits-all method for analyzing a potential investment, and competitors would
21 obtain an unfair advantage over Silver Lake if its methods were revealed.

22 5. I understand that the Plaintiff in this action has submitted a Motion for Partial
23 Summary Judgment that attaches transcripts and exhibits that have been designated as
24 confidential. I am submitting this declaration in support of Silver Lake’s request that discrete
25 portions of Exhibits 179, 194 (including the corresponding text in Plaintiff’s brief) and 201 remain
26 under seal because their public disclosure would jeopardize Silver Lake’s long-standing
27 relationship with certain investors and reveal the proprietary manner in which Silver Lake
28 analyzes potential investments.

6. Exhibits 179, 194 and 201 are attached hereto and highlighted to reflect the material that should be redacted.

Exhibit 194

7. Exhibit 194 is an August 16, 2018 email sent by Egon Pierre-Durban, Silver Lake's Co-CEO, regarding investor outreach in connection with a potential Tesla take-private transaction. A portion of the final bullet in the list of potential investors should be redacted because it reveals the identities of certain Silver Lake investors, which Silver Lake does not publicly disclose and have nothing to do with the issues raised in Plaintiff's motion.

8. Publicly identifying the names of these investors would jeopardize Silver Lake's relationship with them and impair its ability to raise capital from them in the future.

9. Silver Lake has a compelling business justification for keeping the identity of its investors confidential, including with respect to market dynamics with other investment firms which, like Silver Lake, may be soliciting investments from many of the same investors.

10. The identified investors also expect and contractually require that their identities remain confidential. For example, the agreement between Silver Lake and the second investor listed states that, subject to certain narrow exceptions, Silver Lake shall not "include the Investor's name, or other identifying information . . . in written materials disseminated to third parties . . . and shall not otherwise disclose, either orally or in writing, any relationship with the Investor using the Investor's name to persons or entities which are not agents or representatives of the Partnership (including attorneys or accountants thereof)." The agreements with the other investors listed include similar language and restrictions.

Exhibit 179

11. Exhibit 179 is a copy of a presentation that Mr. Durban and Elon Musk, Tesla's CEO, discussed during a meeting on August 10, 2018 relating to Mr. Musk's attempt to take Tesla private. The presentation is more than 30 pages long, but only one page – page 29 – is cited in Plaintiff's brief.

12. The vast majority of the presentation's slides can be made public, including page 29, but certain discrete portions should be redacted because they reveal Silver Lake's proprietary

1 analysis of a Tesla take-private transaction, Tesla's business prospects and its proprietary views of
2 the broader electric vehicle industry. Although the presentation is a few years old at this point,
3 Silver Lake's approach to analyzing companies and their industries and sectors is proprietary and
4 one of Silver Lake's most important differentiating factors in the industry, and there are themes
5 and commonalities that remain true at present.

6 13. Silver Lake is in the business of growing companies and making them better, and a
7 substantial focus of the presentation reflects how Silver Lake would apply its proprietary expertise
8 and industry views to accomplish those objectives with respect to Tesla. As such, this information
9 and Silver Lake's approach to analyzing Tesla would be of significant value to a competitor,
10 including because one could apply similar analyses and perspectives to other companies.

11 14. For example, pages 4-5 reflect Silver Lake's proprietary analysis of the way in
12 which a Tesla take-private could have been structured and pages 19-22 reflect Silver Lake's
13 proprietary assessment of Tesla's performance and business opportunities. Beyond its analysis of
14 Tesla, pages 16 and 24-25 reflects Silver Lake's views on the broader electric vehicle sector and
15 the opportunities that exist within that sector. Such information is particularly sensitive because
16 Silver Lake is an investor in that industry.

17 15. The second page of the presentation, which can be made public, contains an
18 extensive disclaimer underscoring the confidential nature of its contents and the potential for
19 irreparable harm to Silver Lake in the event of disclosure. For example, the disclaimer states that
20 the presentation "is being provided on a confidential basis for use solely in connection with the
21 contemplated discussions regarding a potential investment by Silver Lake" and "[b]y receiving
22 this Presentation, the recipient is deemed to agree that it will keep the confidential information
23 contained herein (including the fact that discussions are taking place) confidential; the recipient
24 agrees that it will use the information contained herein only for its intended informational purpose
25 and for no other purpose; and promptly return any such information, along with any other copies,
26 at the request of Silver Lake. The recipient acknowledges that irreparable harm may be caused by
27 the recipient's failure to do so."

28 16. Publishing Exhibit 179 in full would seriously disadvantage Silver Lake compared

1 to it competitors, whose investment methodologies would remain secret. If other investment
2 companies were to become aware of Silver Lake's methodologies, they would be able to undercut
3 Silver Lake's ability to pitch investments and otherwise obtain opportunities that belong to Silver
4 Lake.

5 **Exhibit 201**

6 17. Exhibit 201 is a presentation prepared by Silver Lake in connection with a meeting
7 of Tesla's Board of Directors on August 23, 2018. The presentation, which is marked confidential
8 and subject to legal review, is 70 pages long, but only 2 pages – pages 9 and 58 – are referenced in
9 Plaintiff's brief.

10 18. As with Exhibit 179, the vast majority of the presentation can be made public,
11 including the information cited in Plaintiff's brief, but certain discrete portions should remain
12 under seal because they reveal Silver Lake's proprietary analysis of a Tesla take-private
13 transaction, Tesla's business prospects and its proprietary views regarding the broader electric
14 vehicle industry. This presentation, however, goes into even greater detail concerning Tesla's
15 business prospects and the electric vehicle industry and thus starkly presents the prospect for
16 irreparable harm.

17 19. For example, pages 15-19 and 21 reflect Silver Lake's proprietary assessment of
18 Tesla's performance and business opportunities and pages 31-33, 35, 39-40, 45-47 and 49 reflect
19 Silver Lake's views on the broader electric vehicle sector and the opportunities that exist within
20 that sector.

21 20. The second page of the presentation, which can be made public, contains the same
22 language as Exhibit 179 and again underscores the confidential nature of Silver Lake's analysis
23 and the harm that would result to Silver Lake if it were to become public.

24 21. For the same reasons discussed above, the revelation of the highlighted information
25 would seriously disadvantage Silver Lake compared to its competitors.

26 **Memorandum of Points and Authorities**

27 22. One sentence of Plaintiff's brief – lines 18-19 on page 15 – requires redaction
28 because it quotes the list of investors identified in Exhibit 194.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 Executed this 25th day of January 2022, at Portola Valley, California.

3 *Sharon Binger*

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5 Sharon Binger

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